

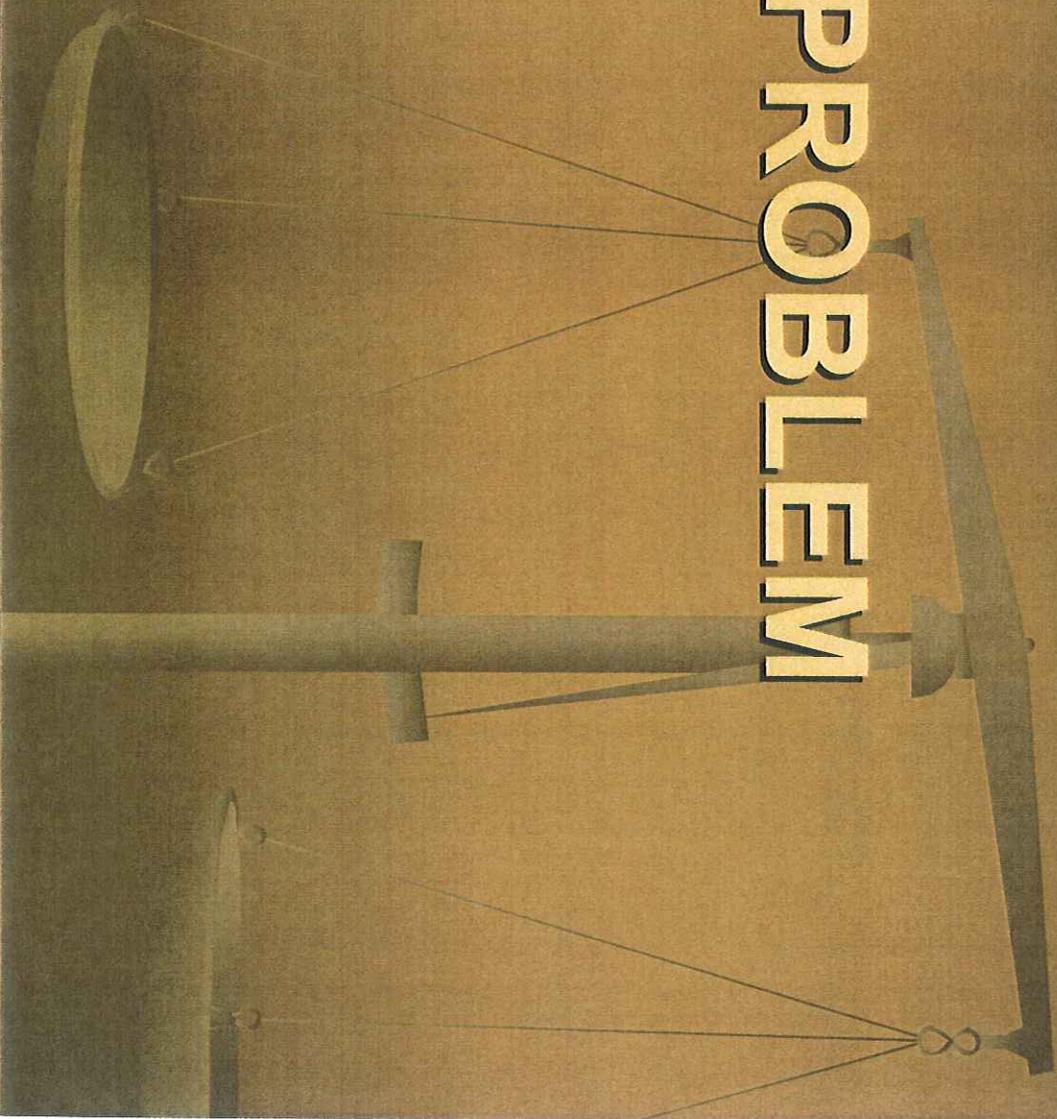
**PUBLIC FINANCING OF
JUDICIAL ELECTIONS IN
NORTH CAROLINA
- A BRIEF HISTORY**

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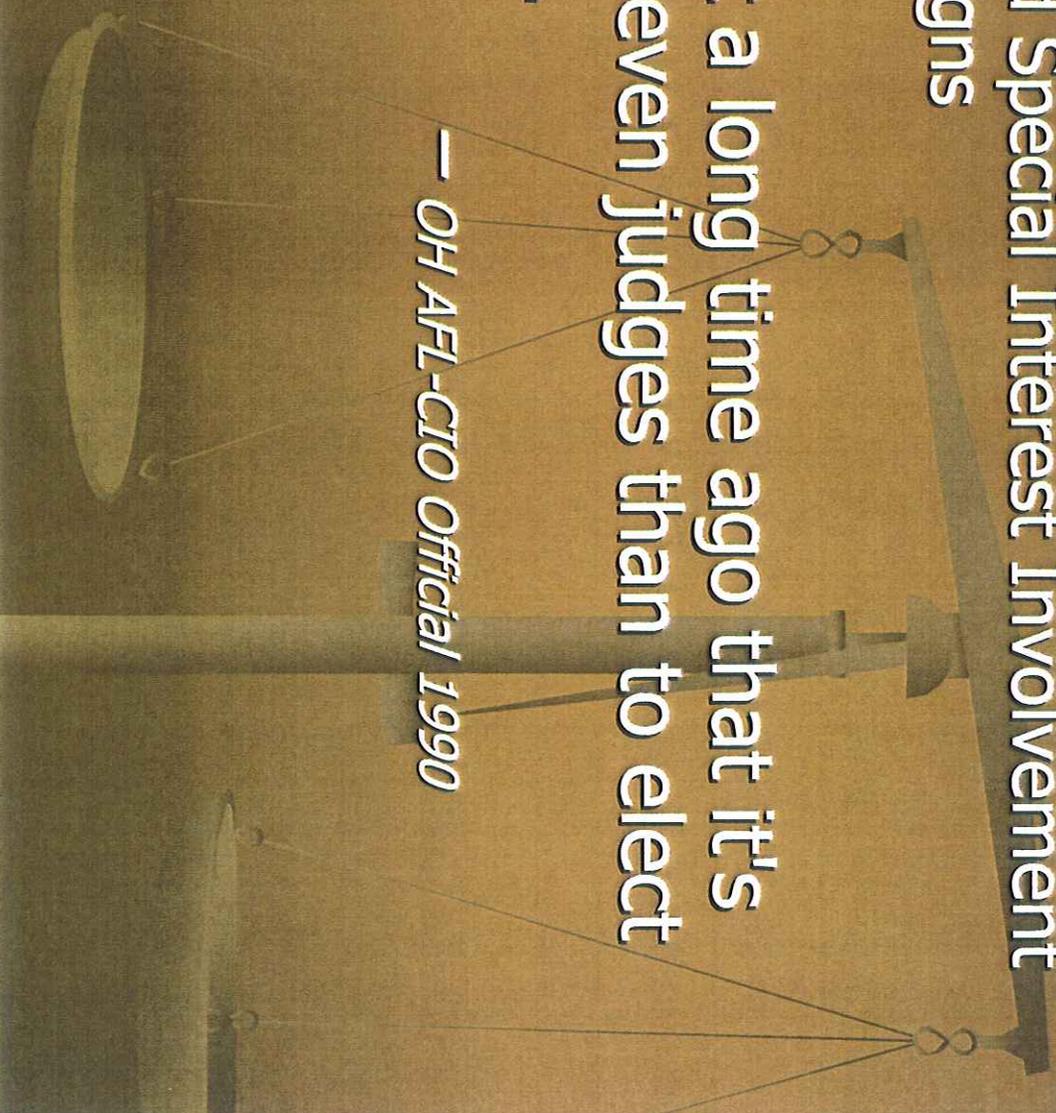
THE PROBLEM



Disturbing National Trends

- An Unprecedented Special Interest Involvement in Judicial Campaigns
- "We figured out a long time ago that it's easier to elect seven judges than to elect 132 legislators".

— OH AFL-CIO Official 1990



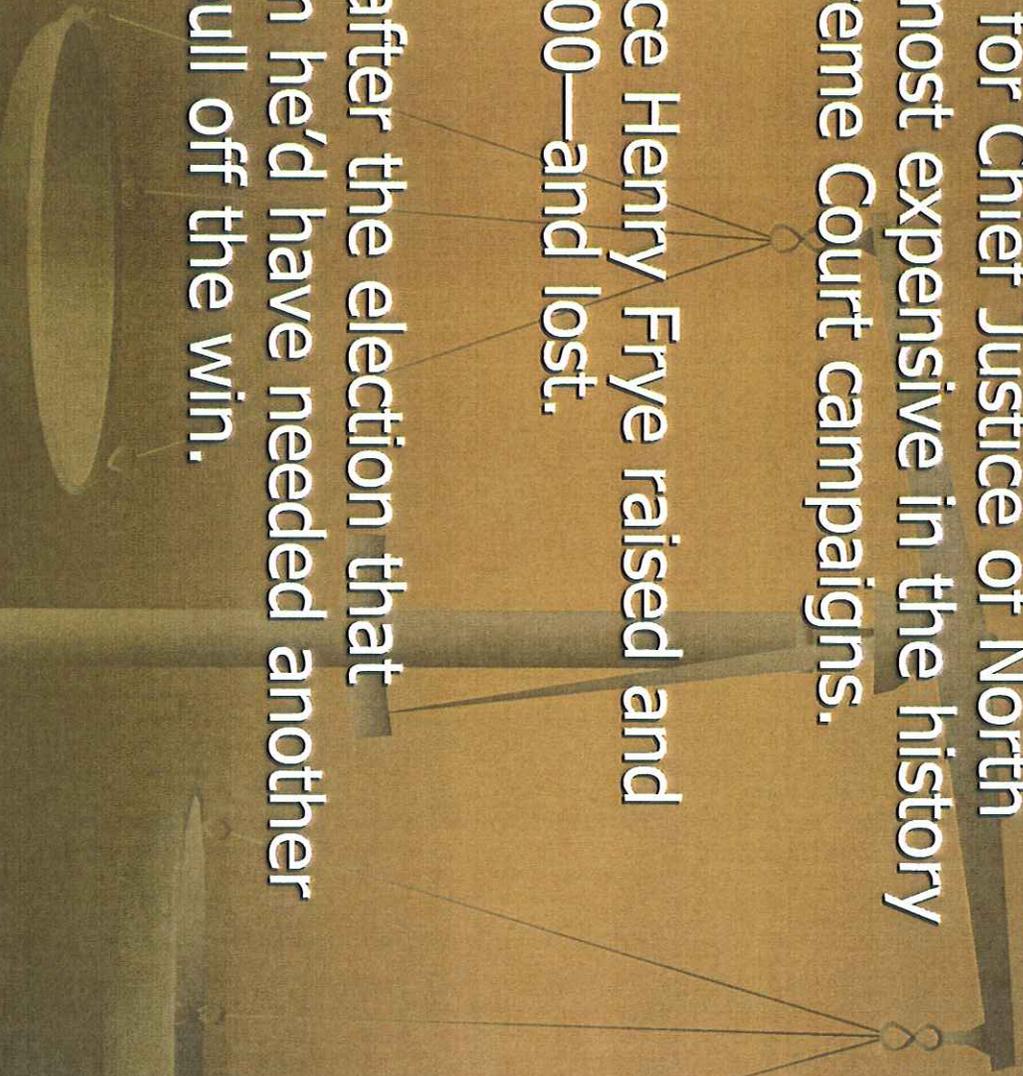
The New Philosophy for Influencing Policy

- "It's worth noting and underscoring that resort to the courts is one of the cheapest political campaigns one can wage. Instead of having to convince a majority of one's state legislature, the governor, and the constituencies that they represent, a political litigant need only convince one trial judge, two judges on the court of appeals and a majority of the state supreme court."

*— Justice Robert Young
of the Michigan Supreme Court*

In North Carolina

- The 2000 election for Chief Justice of North Carolina was the most expensive in the history of the state's Supreme Court campaigns.
- Former Chief Justice Henry Frye raised and spent over \$900,000—and lost.
- He told reporters after the election that confidants told him he'd have needed another million dollars to pull off the win.



Increasingly Partisan Elections

- Partisan judicial elections attracted much more money nationally, \$471,227 in the 2001 - 2002 cycle, than nonpartisan judicial elections, \$131,262 in the 2001-2002 cycle.
- Television advertising buys reveal similar patterns: in 2002, more than \$2.2 million was spent on ads in states with partisan elections, compared to \$290,525 in nonpartisan states and none in retention states.
- While the cost of advertising varies from state to state, that cannot be used to explain these variances. In states where partisan races take place alongside nonpartisan races, the difference in advertising expenses remains.
 - In Illinois in 2002, even as an incumbent was re-elected in a cost-free retention contest, candidates in a partisan contest raised \$1.9 million.
 - In New Mexico, two of three Supreme Court contests were retention elections - no money was spent. In the third race, a partisan contest, candidates raised nearly \$91,000.
- In North Carolina, the 2002 Orr/Hunter race was dominated by attacks against the candidates' ethics and behavior by the state's political parties.

Disruption of Judicial Professionalism

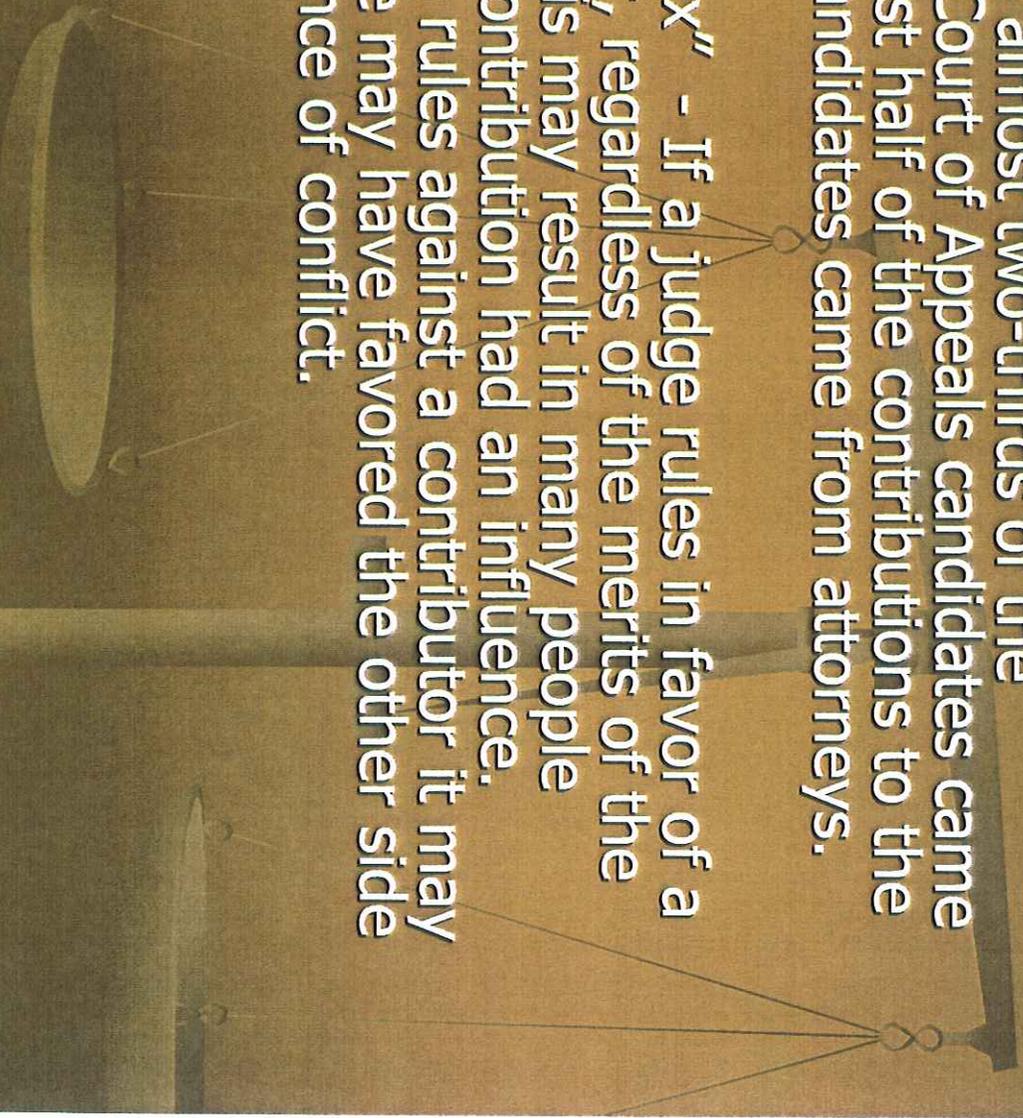
- More aggressive tone and political conduct in campaigns – increasing after *Republican Party of Minnesota v. White*
- More emphasis on fundraising

"It's the most distasteful aspect of politics to me. I like getting out and meeting people, but I do not like having to raise money. I did some of that and had a lot of fundraisers around the state. But it's not something I think is good for the judiciary."

- *Former Chief Justice I. Beverly Lake Jr.*

Public Confidence vs. Campaign Contributions

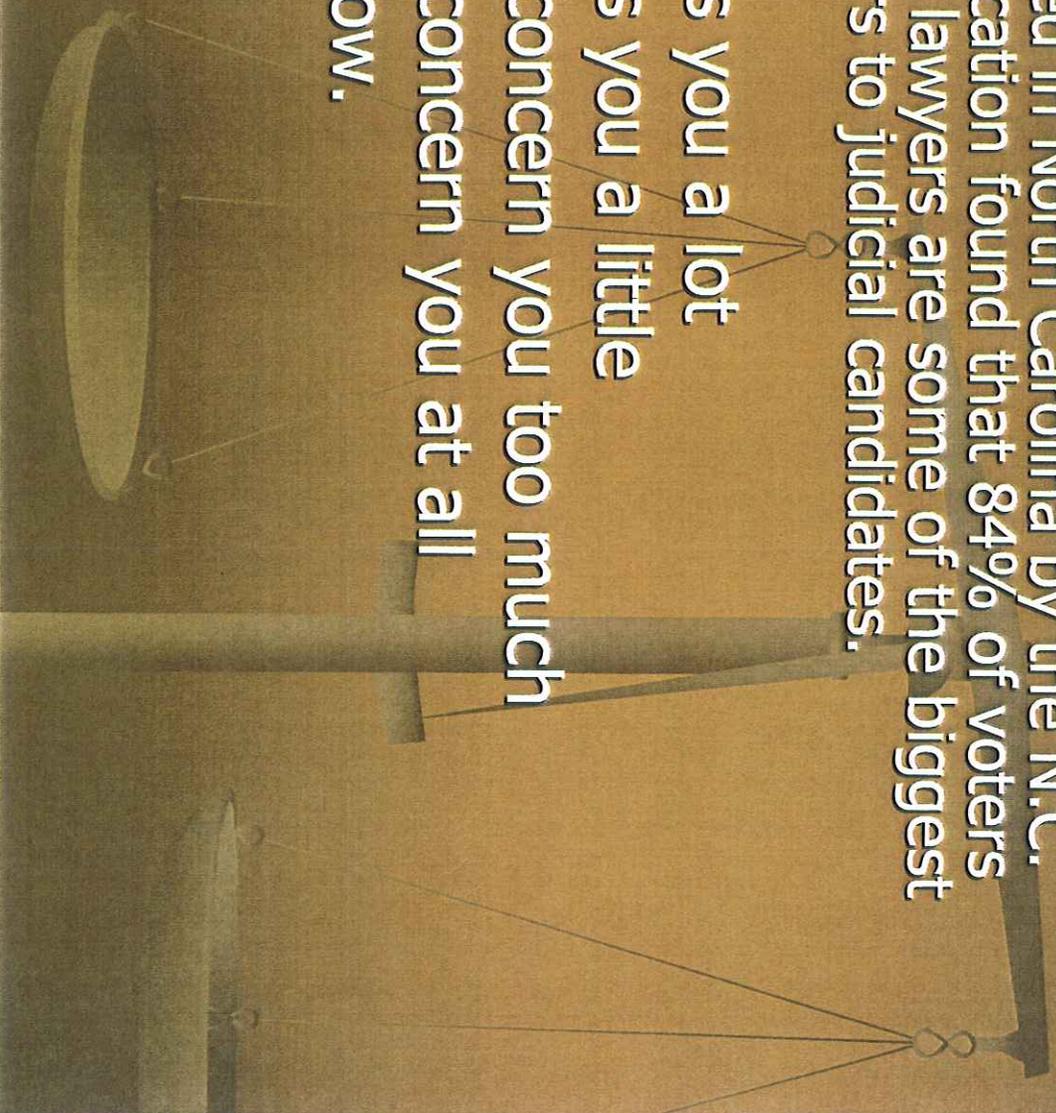
- In the 2000 elections almost two-thirds of the contributions to NC Court of Appeals candidates came from attorneys. Almost half of the contributions to the NC Supreme Court candidates came from attorneys.
- The “Fairness Paradox” - If a judge rules in favor of a campaign contributor, regardless of the merits of the contributor’s case, this may result in many people suspecting that the contribution had an influence. Likewise, if the judge rules against a contributor it may appear that the judge may have favored the other side to avoid the appearance of conflict.



Public Opinion

A 2002 survey conducted in North Carolina by the N.C. Center for Voter Education found that 84% of voters were concerned that lawyers are some of the biggest campaign contributors to judicial candidates.

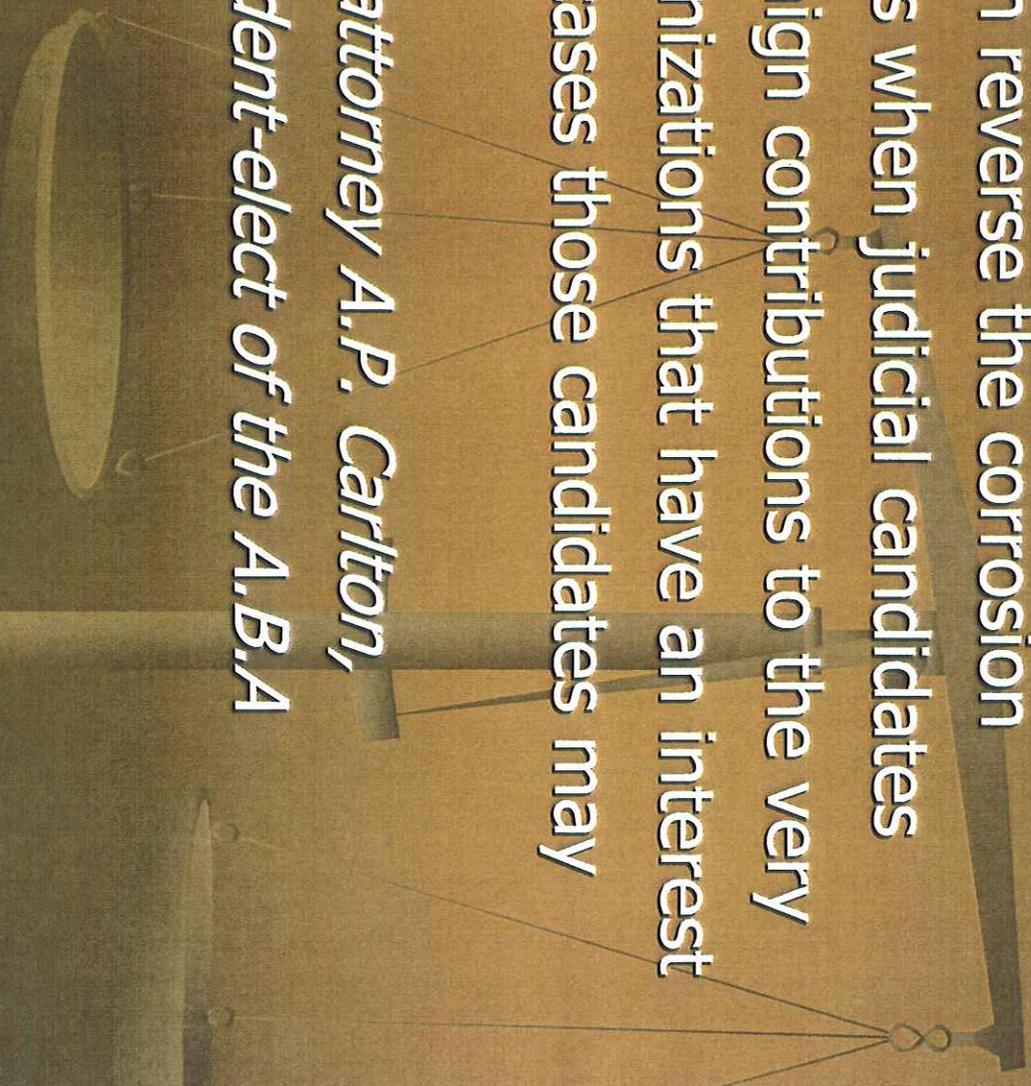
- 64% Concerns you a lot
- 20% Concerns you a little
- 5% Doesn't concern you too much
- 7% Doesn't concern you at all
- 3% Don't know.



Public Campaign Financing Offers a Solution

"Public funding... can reverse the corrosion that taints our courts when judicial candidates must turn for campaign contributions to the very individuals and organizations that have an interest in the outcomes of cases those candidates may decide as judges."

- *Raleigh attorney A.P. Carlton,
then president-elect of the A.B.A*



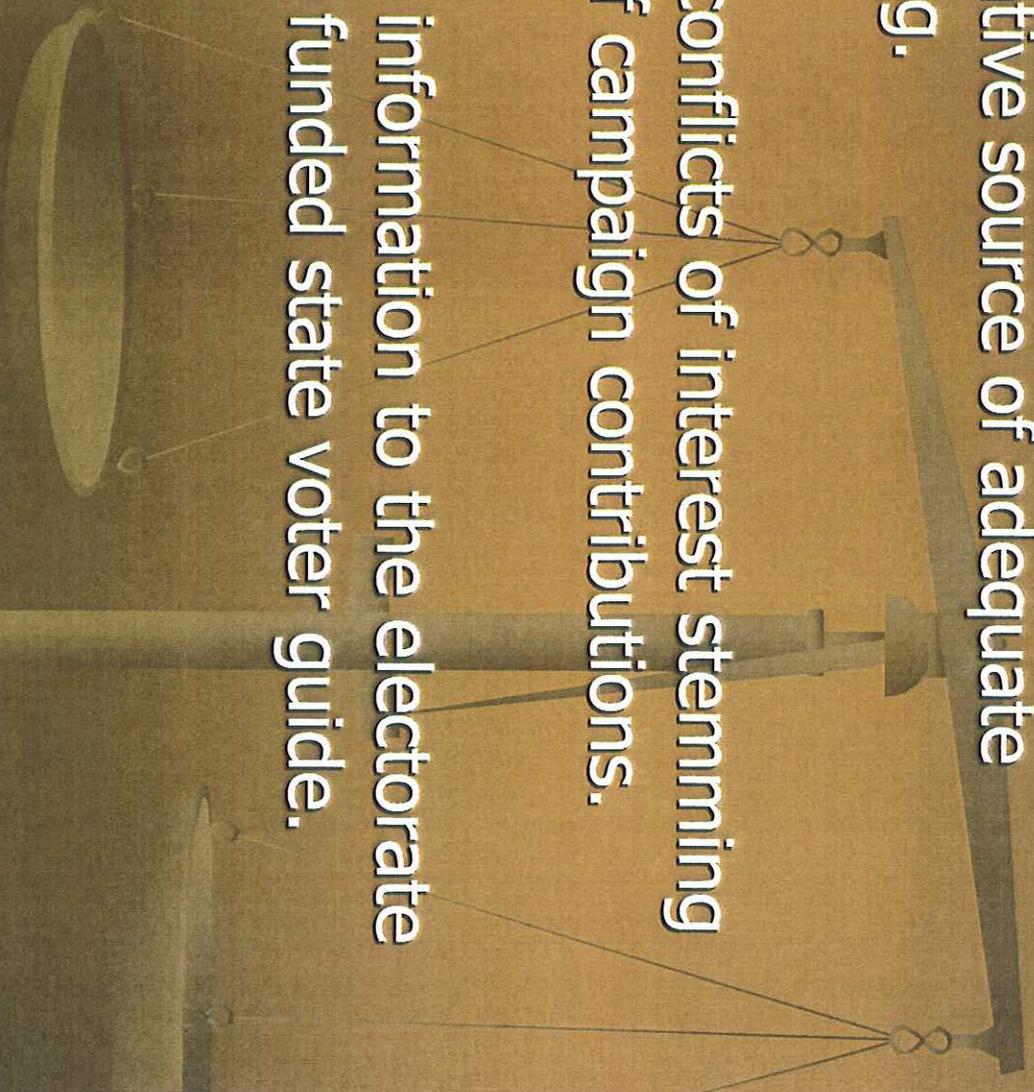
The Purpose of the JCRA

"...To ensure the fairness of democratic elections in North Carolina and to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent to influence the outcome of elections. The potential for corruption and its appearance is especially problematic in elections of the judiciary, since impartiality is uniquely important to the integrity and credibility of the courts."

- (Ch. SL 2002-158)

Methods for Accomplishing this Purpose

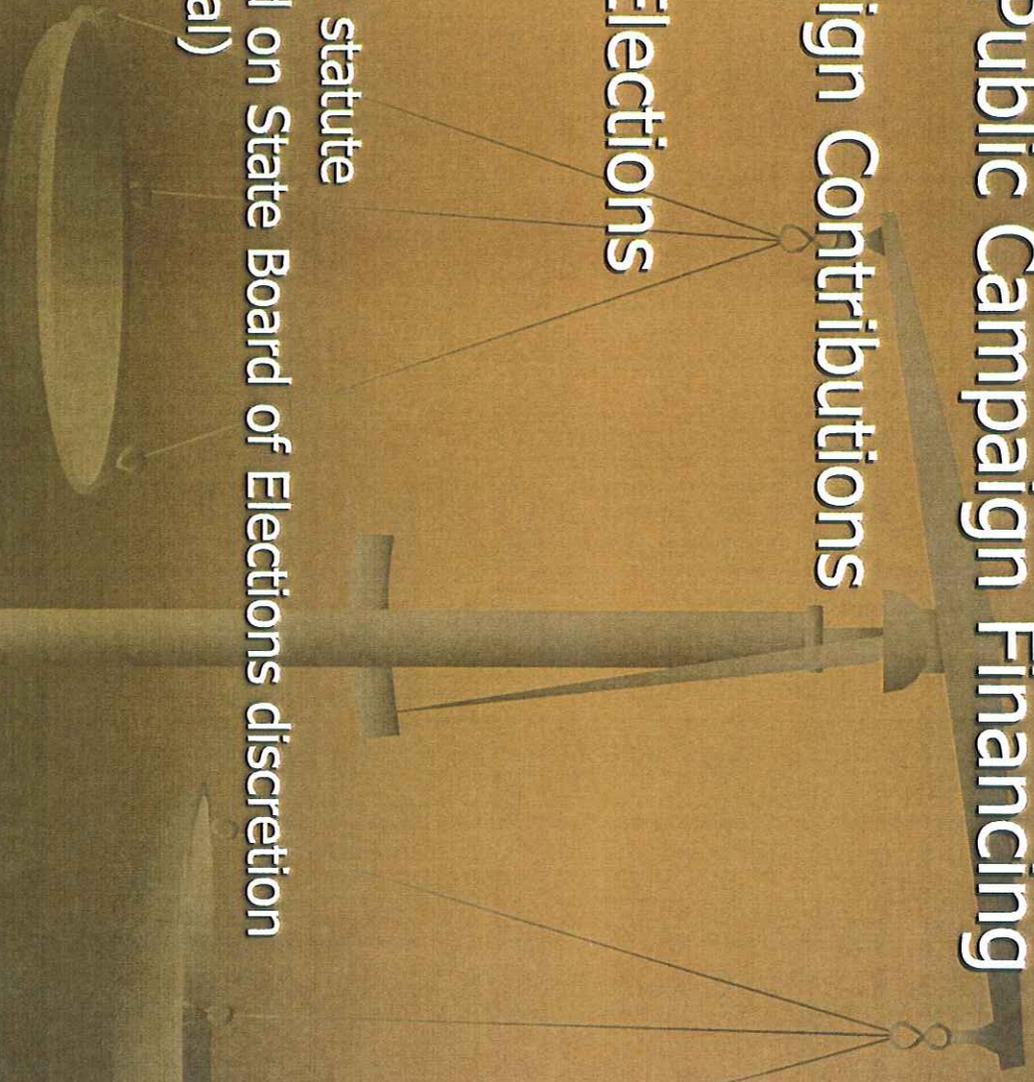
- Provide an alternative source of adequate campaign financing.
- Reduce potential conflicts of interest stemming from the source of campaign contributions.
- Increase essential information to the electorate through a publicly funded state voter guide.



MECHANICS OF JCRA

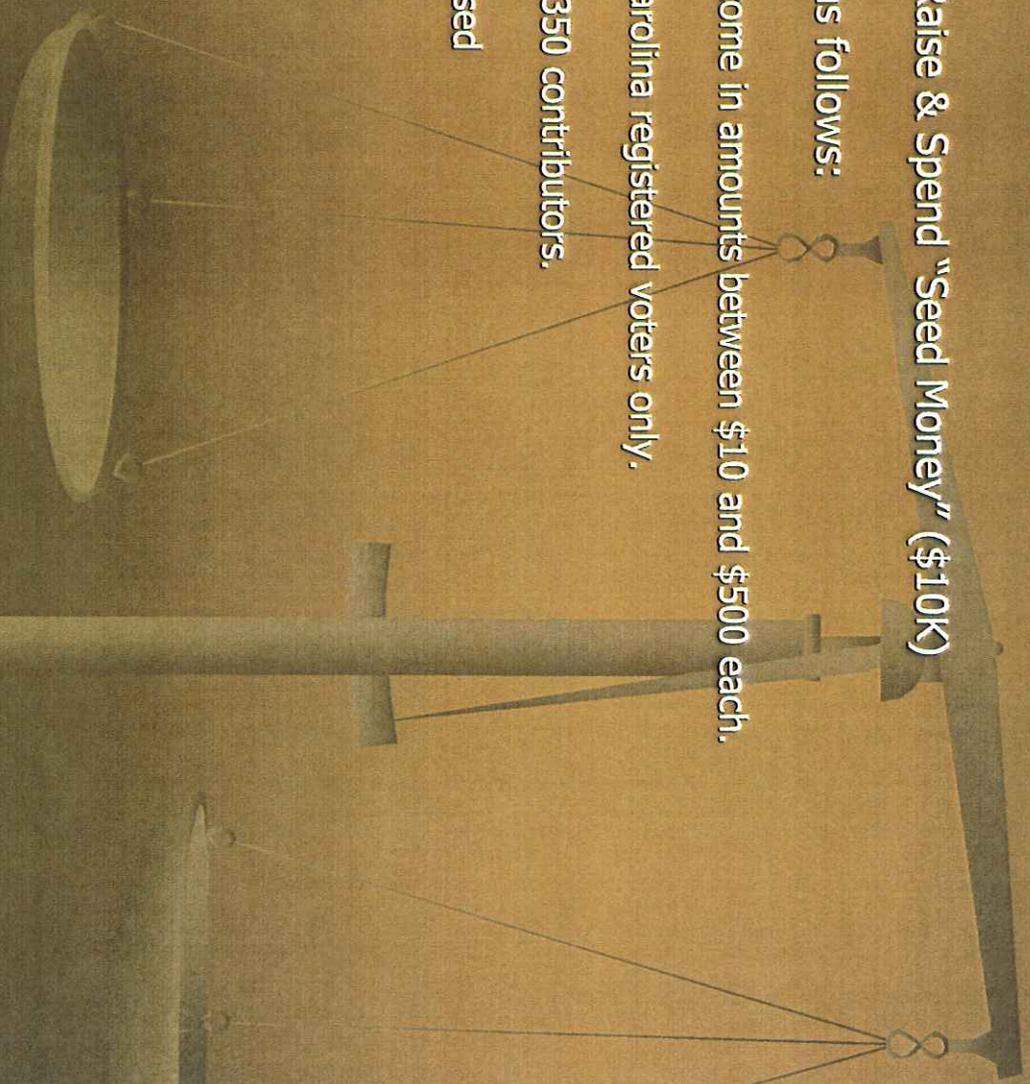
Changes Beyond Public Campaign Financing

- Lower Campaign Contributions
- Nonpartisan Elections
- Voter Guide
 - Content based on statute
 - Distribution based on State Board of Elections discretion (primary v. general)



Qualifying for Public Campaign Financing

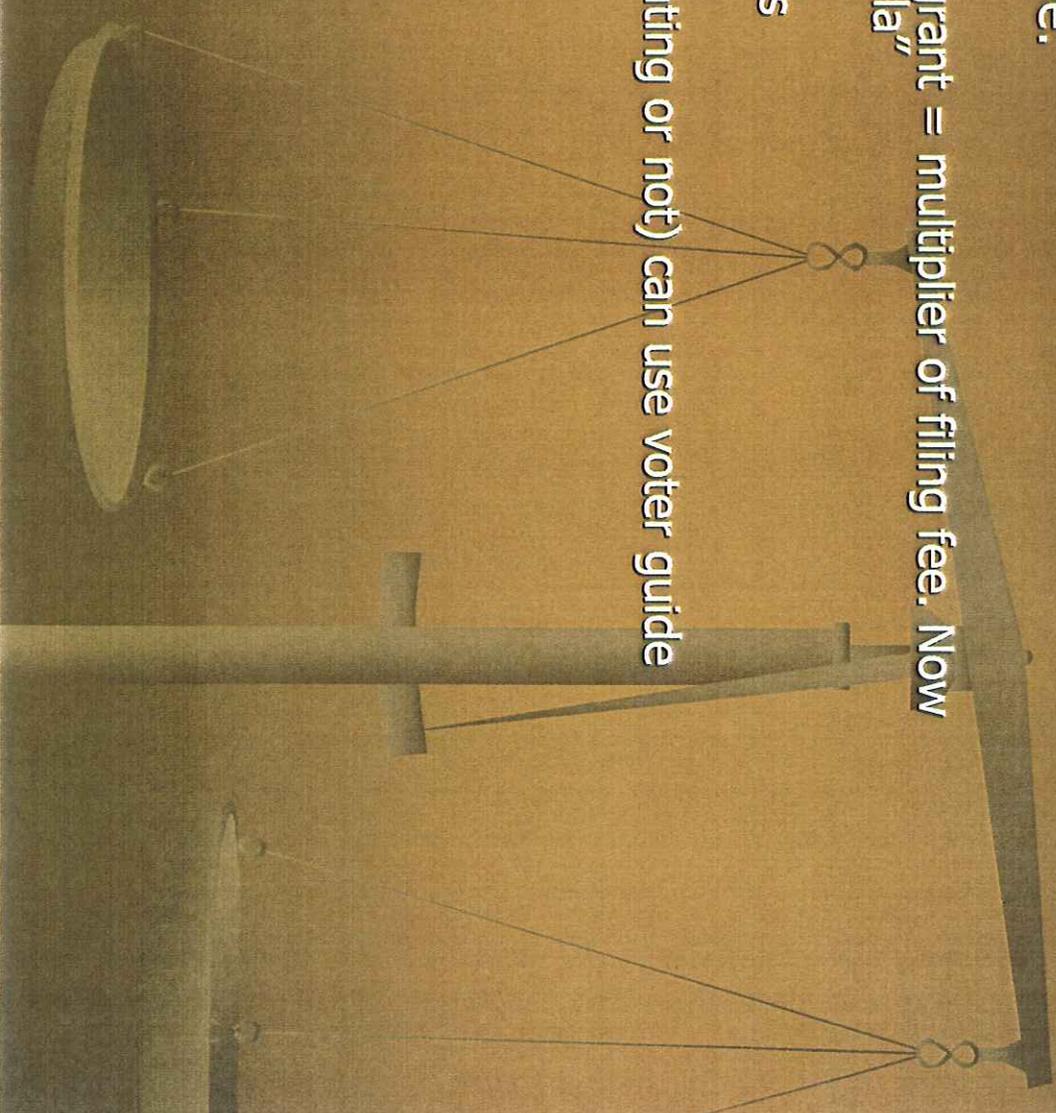
- Voluntary Participation
- Declare Intent to Participate / Raise & Spend "Seed Money" (\$10K)
- Raise Qualifying Contributions as follows:
 - Qualifying contributions must come in amounts between \$10 and \$500 each.
 - They must come from North Carolina registered voters only.
 - They must come from at least 350 contributors.
 - Limits on how much can be raised



Benefits of Participation

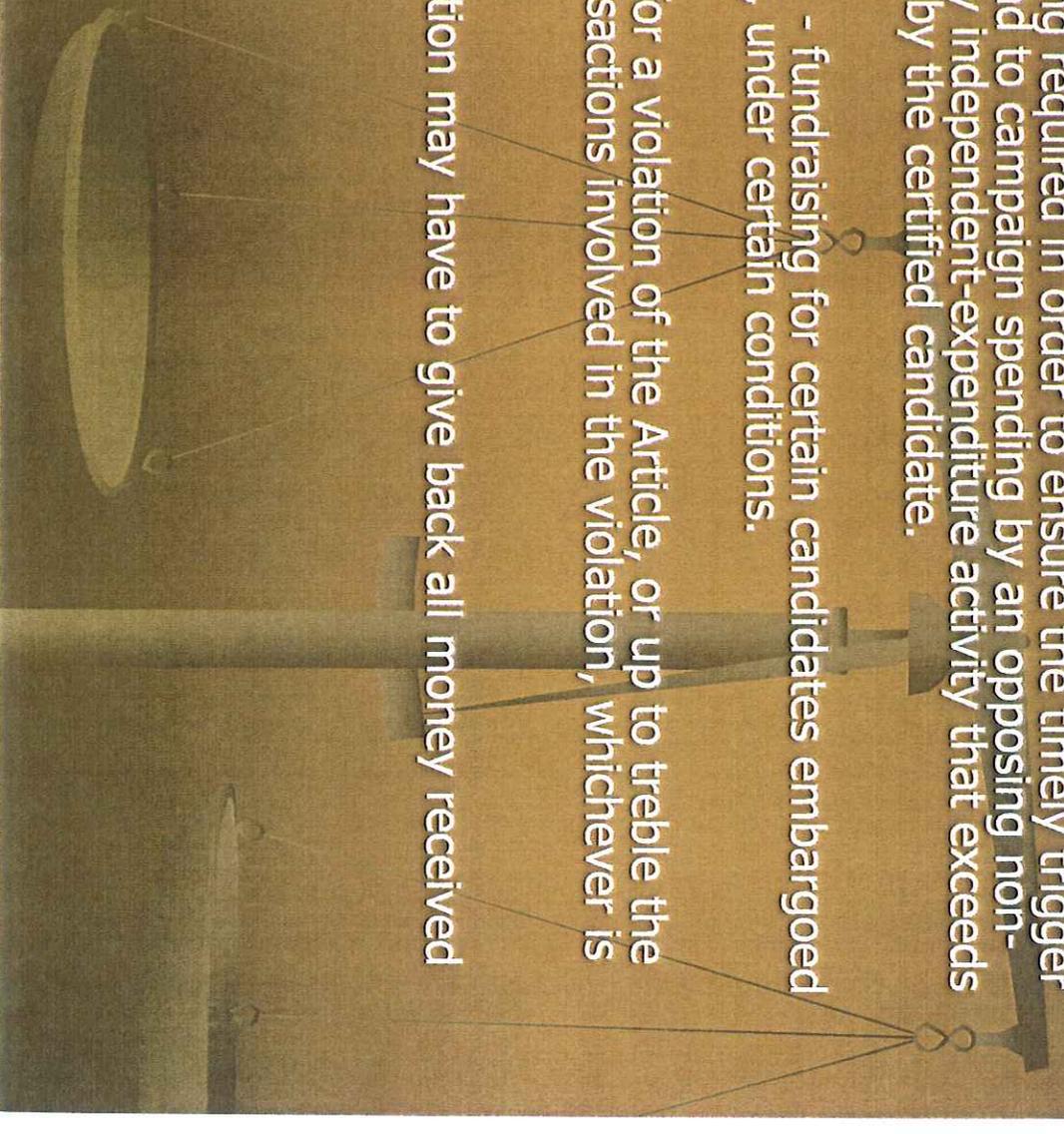
Qualifying candidates receive:

- Public Grant (in JCRA, grant = multiplier of filing fee. Now "competitiveness formula")
- Possible Matching Funds
- All candidates (participating or not) can use voter guide



Other Provisions of JCRA

- Expedited campaign reporting required in order to ensure the timely trigger of Matching Funds to respond to campaign spending by an opposing non-certified candidate and/or by independent-expenditure activity that exceeds the spending limit accepted by the certified candidate.
- “Surprise Attacks” provision - fundraising for certain candidates embargoed 21 days before Election Day, under certain conditions.
- Civil fines of up to \$10,000 for a violation of the Article, or up to treble the amount of any financial transactions involved in the violation, whichever is greater.
- A certified candidate in violation may have to give back all money received from the Fund.

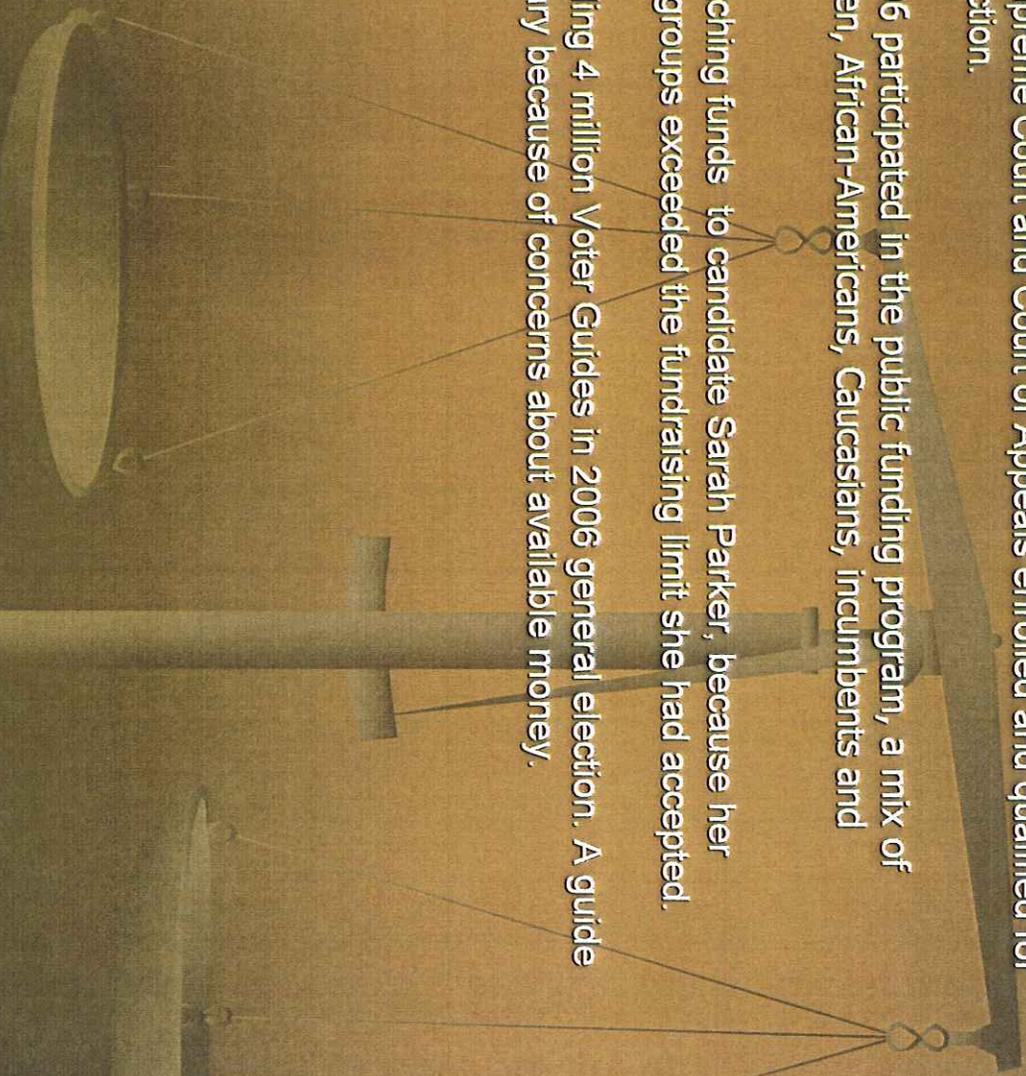


First run 2004

- The number of Appellate Court candidates who passed public-trust thresholds and successfully qualified for public financing program: 12 of 16
- The number of candidates who sought to qualify but didn't meet minimum thresholds: 2
- The number of the winning candidates who received public financing: 4 of the 5 winners
- The amount of public funds provided to 12 qualified candidates in program: \$1,497,725
 - \$138,125 x 5 Court of Appeals candidates = \$690,625
 - \$201,775 x 2 Supreme Court (Parker seat) candidates = \$403,550
 - \$ 80,710 x 5 Supreme Court (Post Primary Vacancy seat) candidates = \$403,550

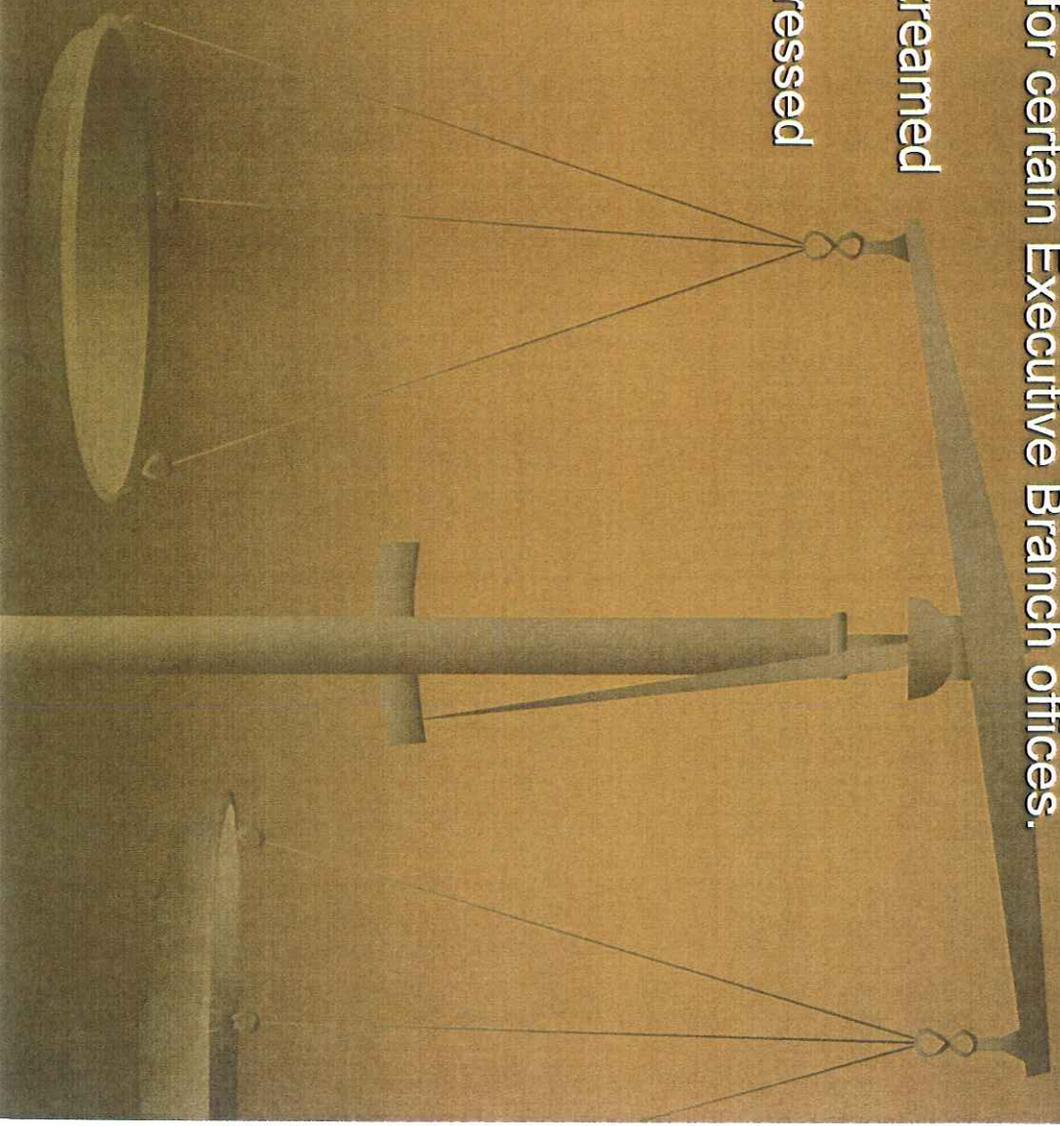
Round 2: 2006

- 8 of the 12 candidates for the NC Supreme Court and Court of Appeals enrolled and qualified for the program in the 2006 general election.
- 5 of the 6 winning candidates in 2006 participated in the public funding program, a mix of Democrats, Republicans, men, women, African-Americans, Caucasians, incumbents and challengers.
- \$155,000 awarded as additional matching funds to candidate Sarah Parker, because her opponent (Rusty Duke) and outside groups exceeded the fundraising limit she had accepted.
- \$650,000 spent for printing and mailing 4 million Voter Guides in 2006 general election. A guide was not mailed to voters in the primary because of concerns about available money.



Round 3: 2008

- Similar Program created for certain Executive Branch offices.
- Program becomes mainstreamed
- Minor technical fixes addressed



“Is the money sufficient to run a campaign?”

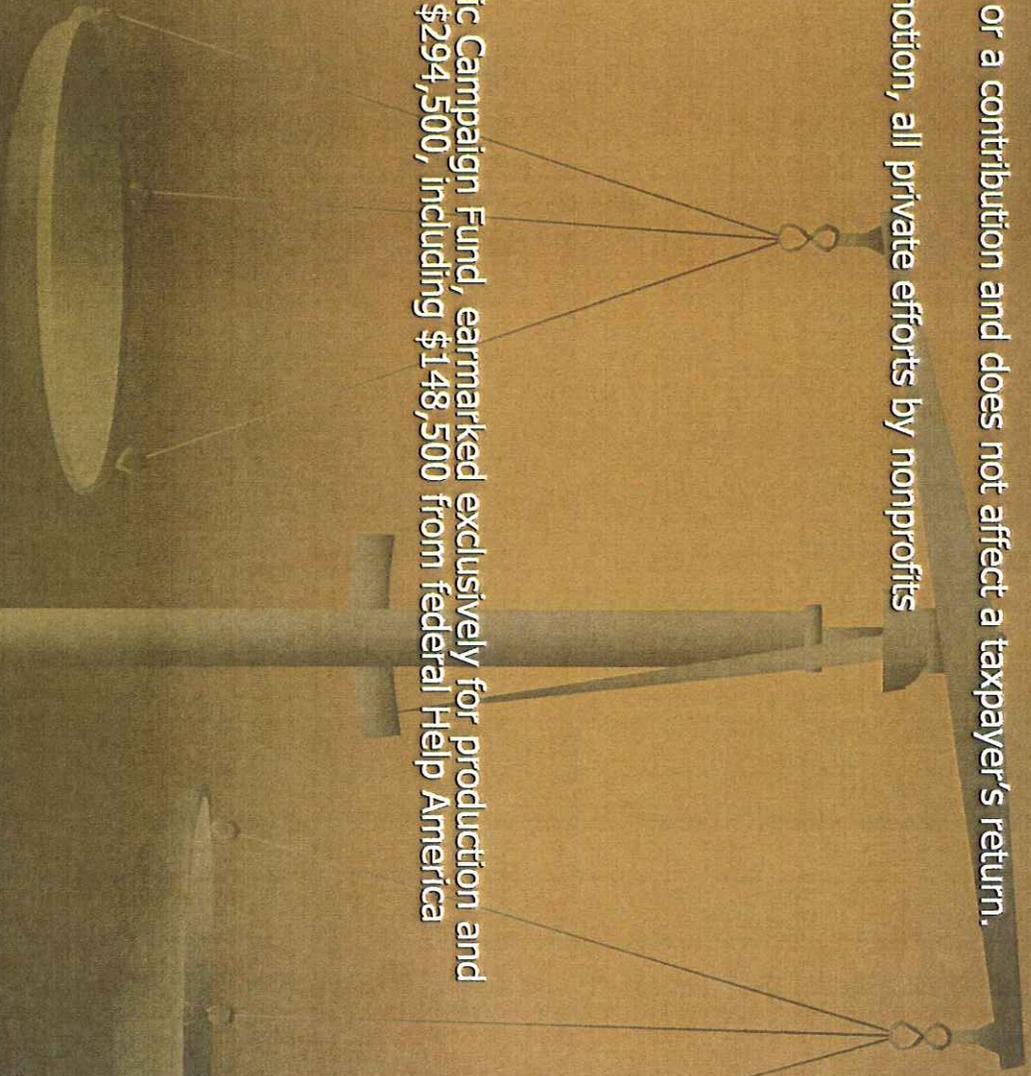
- Many of these criticisms are based on the advice of paid political consultants that have a vested interest in how much a candidate spends on a race. The program provides:
 - Less than races for Gov & US Senate, more than past races for judge.
 - Over the historical average for Supreme Court candidates
 - Almost twice the historical average spent by Court of Appeals candidates.
- NC judicial candidates have been running, and winning, with less money than what is available from the Public Campaign Fund.

Impact on Special Interest Group Financing of Judicial Races

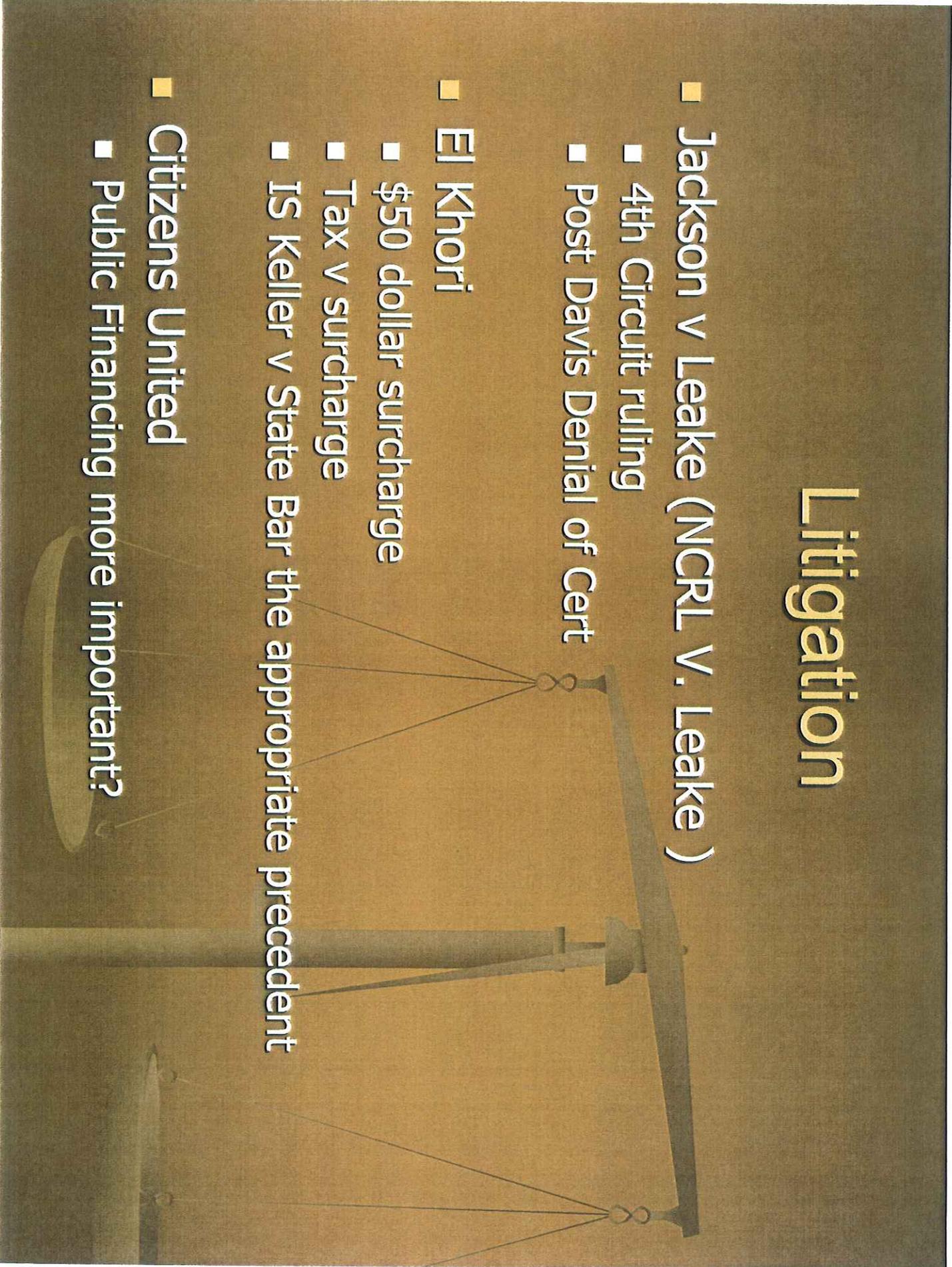
SECTOR	2002	%	2004	%
Business Community	\$ 94,860	12%	\$ 54,979	4%
Legal Community	\$321,284	40%	\$136,153	11%
Labor Community	\$ 6,450	1%	\$ 0	0%
Other Professional Groups	\$ 83,154	10%	\$ 47,648	4%
Small Contributions (Under \$100)	\$ 20,035	3%	\$ 47,300	4%
Candidate	\$ 74,950	9%	\$ 47,580	4%
Unknown	\$109,906	14%	\$118,210	9%
Public Campaign Fund	\$ 0	0%	\$807,080	64%

Financing the Public Fund

- Income tax Check-off box
 - a Designation, not an "add-on" or a contribution and does not affect a taxpayer's return.
 - No public money spent on promotion, all private efforts by nonprofits
- Attorneys surcharge contributions
 - \$50 dollars
 - Mandatory vs. voluntary
 - *El Khori V. State Bar*
- Additional funds donated to the Public Campaign Fund, earmarked exclusively for production and distribution of the state voter guide: \$294,500, including \$148,500 from federal Help America Vote Act funds.
- General Fund appropriation



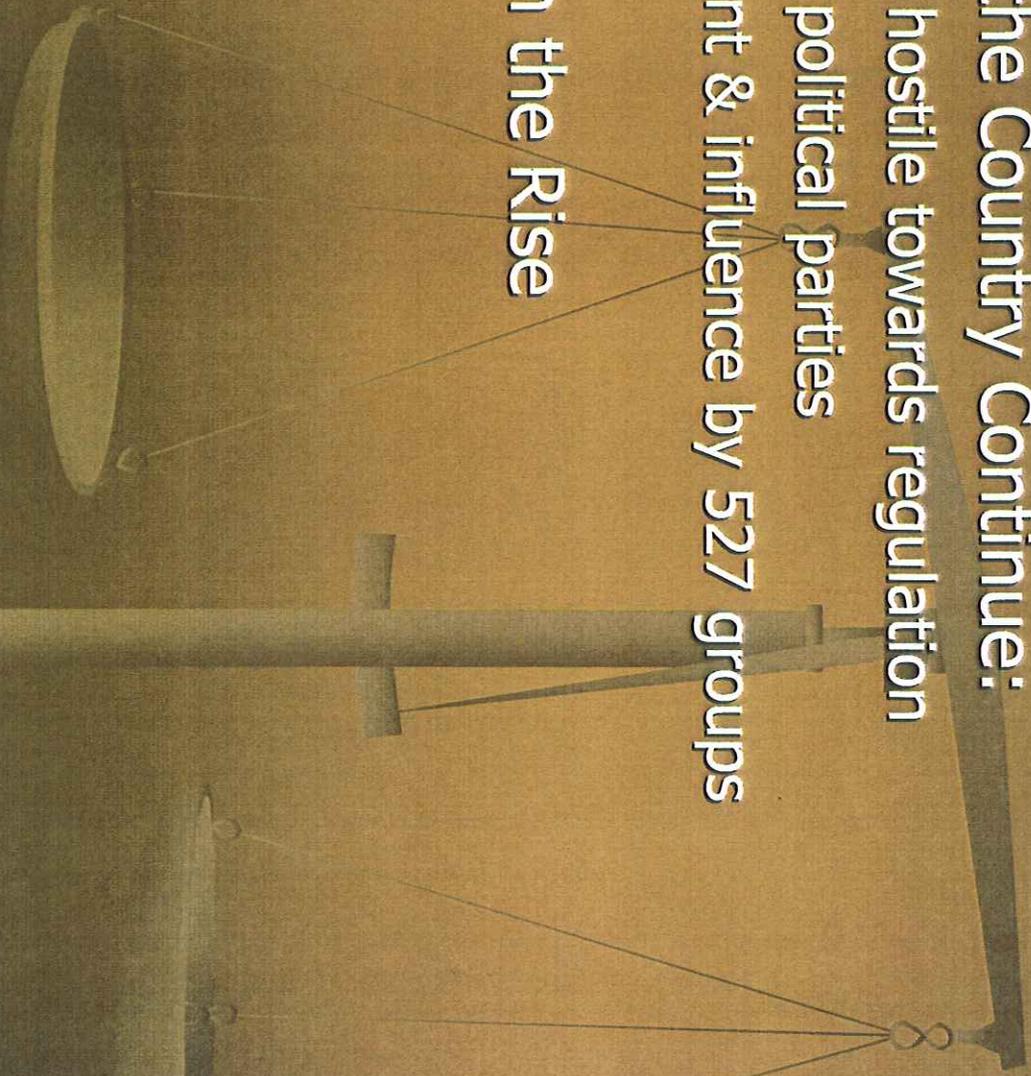
Litigation



- Jackson v Leake (NCRL V. Leake)
 - 4th Circuit ruling
 - Post Davis Denial of Cert
- El Khorri
 - \$50 dollar surcharge
 - Tax v surcharge
 - IS Keller v State Bar the appropriate precedent
- Citizens United
 - Public Financing more important?

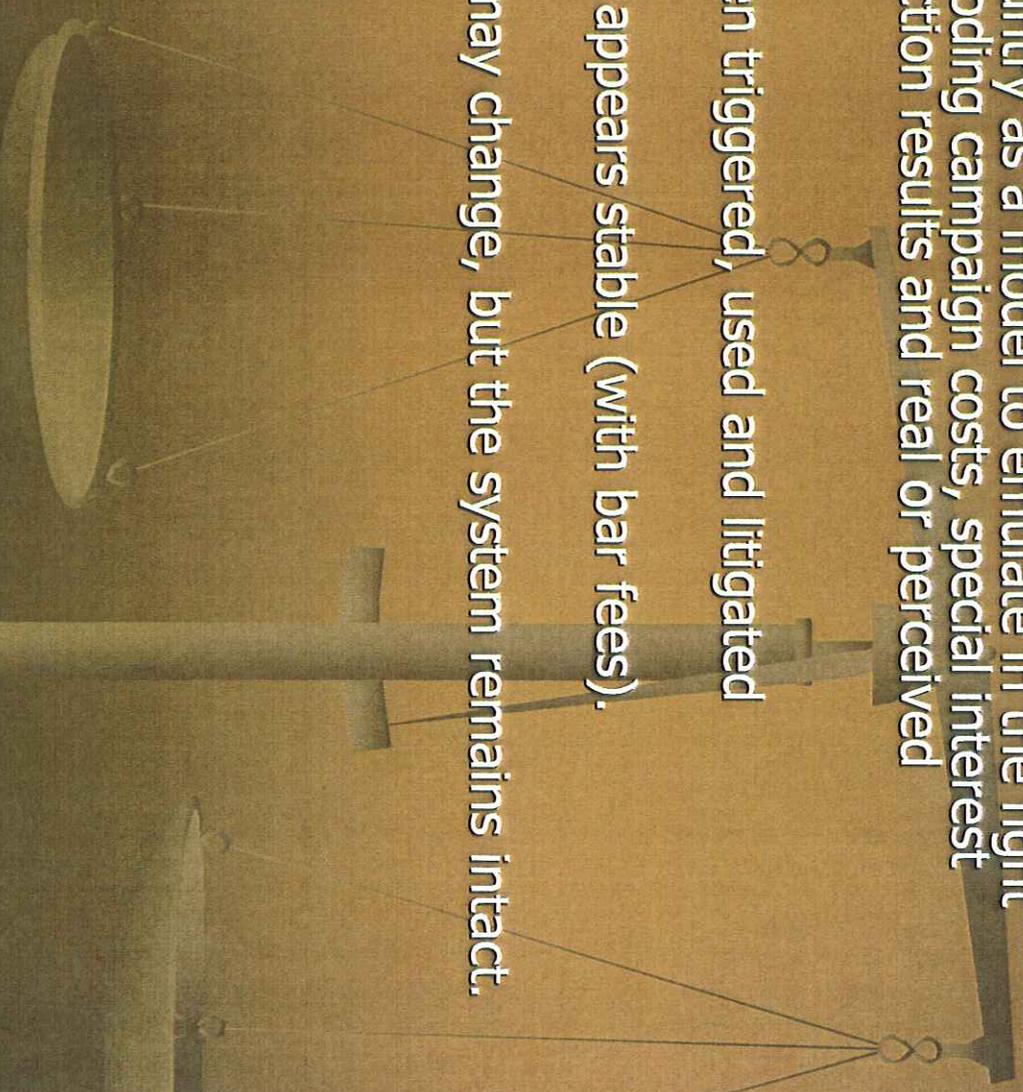
The Future

- Problems around the Country Continue:
 - Court increasingly hostile towards regulation
 - More spending by political parties
 - Greater involvement & influence by 527 groups
- Public financing on the Rise
 - New Mexico
 - Wisconsin
 - Michigan



NC has Escaped the Trends

- Regarded around the country as a model to emulate in the fight against problems of exploding campaign costs, special interest group influence over election results and real or perceived impropriety.
- matching funds have been triggered, used and litigated
- Funding for the program appears stable (with bar fees).
- Some details of the law may change, but the system remains intact.



For More Information...

Complete documentation and citations of information contained within this presentation available. Contact:

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The NC Center for Voter Education

(919) 783-8811

www.ncvotered.com

